IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 20762 of 2006(V)

OS.357/2003 of MUNSIFF COURT, MAVELIKKARA

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PETITIONERS:

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1. A. AHAMMED, AGED 55,
   S/O. ABDUL KAREEM RAWTHER, RAZEENA MANAZIL,
   ERUMAKUZHY MURI, PALAMEL VILLAGE.

2. NABEEZA, D/O. PATHUMMA, KATTOOR PUTHEN
   PARAMBIL, KOZHENCHERRY.

3. UMMA SALMA, D/O. PATHUMMA,
   KATTOOR PUTHEN PARAMBIL, KOZHENCHERRY.

4. SHAMSUDEEN, AJMAL MANZIL,
   ERUMAKUZHY MURI, PALAMEL VILLAGE.

BY ADV. SRI.R.PADMAKUMAR
SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENT:

SALAVUDEEN, CHARUVILAYYATHU VADAKKATHIL
ERUMAKUZHY MURI, PALAMEL VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 20762 OF 2006

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COY OF PLAINT NIL DT.IN OS NO.357/03 BEFORE THE MUNSIFF'S COURT, MAVELIKKARA.

EXT.P2 : TRUE COPY OF WRITTEN STATEMENT DT.27.10.2003 IN OS NO.357/03 BEFORE THE MUNSIFF'S COURT, MAVELIKKARA.

EXT.P3 : TRUE COPY OF IA NO.2509/05 DT.2.12.05 FILED BEFORE THE -DO-

EXT.P4 : TRUE COPY OF OBJECTION NIL DT. FILED BEFORE THE -DO- BY THE RESPONDENT.

EXT.P5 : TRUE COPY OF ORDER DT.12.07.03 IN IA NO.2509/05 IN OS NO.357/03 OF THE MUNSIFF'S COURT, MAVELIKKARA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 20762 OF 2006

Dated this the 27th day of July, 2007

JUDGMENT

Under the impugned order Ext.P5, an application filed by the petitioner plaintiff for amendment of the plaint, in a suit which is originally instituted for fixation of boundary and for mandatory injunction has been declined by the learned Munsiff. Even though Sri.R.T.Pradeep, counsel for the petitioner would flay the order of the learned Munsiff with all the power that he could command, I am not persuaded to hold that Ext.P5 is vitiated to the extent of justifying interference under the visitorial jurisdiction of this Court under Article 227. It is seen admitted in paragraph 2 of the plaint and in the affidavit Ext.P3 submitted by the petitioners themselves that notwithstanding the settlement deed, the parties are in joint possession. In the light of such admission, the learned Munsiff rightly thought that a decree of mandatory injunction may not be the proper remedy to be sought for by the petitioners. But, Mr.Pradeep submits that the execution of the settlement deed relied on in the plaint is not seriously disputed. The contention is only that notwithstanding the settlement deed, parties are continued to be in joint possession of the properties. In other words, the title does not appears to be disputed.

If that be so, since it is conceded by the petitioners that some of the items in the suit schedule are now in the possession of the defendants, the petitioners will have to seek recovery of possession on the strength of the petitioners' title. Even as I refuse to interfere with Ext.P5, I permit the petitioners to file an application for amendment of the plaint so as to include the relief of recovery of possession on the strength of title. If such an application is received by the court below within one month of the petitioner receiving copy of this judgment, the same will be disposed of in accordance with law within another one month.

The Writ Petition is disposed of as above.

PIUS C. KURIAKOSE, JUDGE

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